

**MINUTES OF THE REGULAR MEETING OF THE
BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS
FOR DECEMBER 20, 2006**

The **Regular Meeting** of the Council of Commissioners was called to order Wednesday, **December 20, 2006** in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by Chief Executive Paul Babb.

ROLL CALL

12 present

PRAYER

Commissioner Bury led the commissioners in prayer

**APPROVAL OF THE MINUTES OF THE
DECEMBER 6, 2006 REGULAR MEETING**

It was moved by Commissioner O’Leary, seconded by Commissioner Bury and carried by a unanimous verbal vote to approve the Minutes of the December 6, 2006 Regular Meeting.

**ITEMS NOT ADDRESSED ON THE AGENDA –
SUSPENSION OF THE RULES**

It was moved by Commissioner O’Leary, seconded by Commissioner Bury and carried by a roll call vote of 12 yeas and 0 nays that in accordance with the provisions of subsection 6 of the Rule VI of the Rules and Order of the Business of the Council of Commissioners of the City and County of Butte-Silver Bow, State of Montana, the Council hereby finds that an emergency condition exists which requires that the council rules be suspended to allow Communication Nos. 06-736 and 06-737 to be added to the agenda of tonight’s Regular Meeting of the Council.

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

Mary Kay Craig, 518 W. Granite, stated that the Superfund process over the years has been very unkind to super citizens or ordinary citizens. Over the years we’ve had many instances of citizens being treated badly. They are treated badly for asking the commissioners to do things that should be reasonable. She said she wanted to register that complaint with the council.

CHIEF EXECUTIVE'S REPORT

Chief Executive Babb recognized Pam Gilman, the Employee of the Month. He thanked her for a job well done. He said he did have a legislative meeting with all the department heads and elected officials yesterday. He said they met for two hours and discussed issues that could be affecting the county and our city as we move into the legislative session. He also encouraged everyone to go see the Christmas display at the Race Track Fire Department. He thanked John Sorich as the Commissioner for that district. He put in a lot of time. The high school kids and many community members came together. The Public Works Department and the Civic Center Staff worked very hard too. Also, in your packets on December 27th we will have the Sine Die.

SECTION I

**INFORMATIONAL REPORT
COMMUNICATION NO. 06-730**

Jeff Amerman, Finance and Budget Director, requesting time on 12/20/06 Agenda to make an Informational report on payroll issues.

Jeff Amerman, Finance and Budget Director gave the staff report. He said there are some issues mainly due to variations between the Butte Silver Bow Personnel Policy and Procedure Manual and Butte-Silver Bow Law Enforcement Department Policy and Procedure Manual. He believes the Personnel Committee is the place to resolve these issues. He requested that this be referred to the Personnel Committee for further action.

Commissioner O’Leary made a “friendly amendment” to note the correct number for this communication is 06-730 instead of 06-731.

It was moved by Commissioner O’Leary, seconded by Commissioner Bury and carried by a unanimous verbal vote to refer Communication No. 06-730 to the Personnel Committee.

Tim Clark, Personnel Director, asked that the other departments be invited to the Personnel Committee meeting too.

SECTION II

CONSENT AGENDA

- A.**
1. COMMITTEE OF THE WHOLE MEETING REPORT
 2. FINANCE & BUDGET COMMITTEE MEETING REPORT
 3. JUDICIARY COMMITTEE MEETING REPORT
 4. PUBLIC WORKS COMMITTEE MEETING REPORT

B.

COMMUNICATIONS

Before entertaining a motion for approval of the Consent Agenda, Chief Executive Babb called for any segregations. Commissioner O'Leary made a "friendly amendment" to Section IV. The correct number on Item No. 1 is Council Bill No. 06-12, Ordinance No. 06-12. He also segregated Item No. 22, Communication No. 06-731.

It was then moved by Commissioner O'Leary, seconded by Commissioner Bury and carried by a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1 through 4 and Section B, Items 1 through 24 with the exception of No. 22.

Communication No. 06-731 Stephen D. Hess, Senior Planner, requesting approval of Preliminary Plat of the Johnson Creek Minor Subdivision.

Commissioner O'Leary wishes to change the recommendation of "concur and place on file" to "refer to the Committee of the Whole." He so moved and it was seconded by Commissioner Bury and carried with a unanimous verbal vote.

SECTION III

COMMUNICATIONS TO BE READ AND ACTED UPON

1. 06-734 Paul Babb, Chief Executive, requesting concurrence in appointment of Dan Boyle as a probationary entry level firefighter.

It was moved by Commissioner O'Leary, seconded by Commissioner Bury and carried by a unanimous verbal vote to concur with the appointment of Dan Boyle as a probationary entry level firefighter. It was moved by Commissioner O'Leary, seconded by Commissioner Bury and carried with a unanimous verbal vote to place Communication No. 06-734 on file.

2. 06-735 Paul Babb, Chief Executive, requesting concurrence in appointment of Jarod Gonzalez as a probationary entry level fire fighter.

It was moved by Commissioner O'Leary, seconded by Commissioner Bury and carried by a unanimous verbal vote to concur with the appointment of Jarod Gonzalez as a probationary entry level fire fighter. It was moved by Commissioner O'Leary, seconded by Commissioner Bury and carried with a unanimous verbal vote to place Communication No. 06-735 on file.

Jeff Miller, Director of Fire Services, then introduced the two candidates and they were given a round of applause.

The Council then recessed at 7:45 PM. They reconvened at 7:50 PM with a roll call of 12 present.

Emergency Communication No. 06-736 – Ellen Crain, Archives Director, requesting approval of change order for Archives roof replacement project.

It was moved by Commissioner O’Leary, seconded by Commissioner Bury and carried by a unanimous verbal vote to concur with the request and place on file.

Emergency Communication No. 06-737 – Paul Babb, Chief Executive, requesting council concurrence and authorization to hire a lobbyist for the 2007 State Legislative Session.

Art Noonan, 1621 Whitman, came to the microphone and spoke in favor of hiring a lobbyist for the 2007 State Legislative Session.

Jon Sesso, House District Representative for District 76, said he too was in support in hiring a lobbyist.

Commissioner Dunlap asked how the person was chosen to be the lobbyist. Chief Executive Babb explained the delegation members made the points that we have somebody that understands the legislative process and somebody particularly that has Butte ties. There have been a couple of names that have been thrown out. One is J. D. Lynch. The other one is Mark Staples. He is asking if they decide to vote on this tonight, he would move forward with contacting those individuals to see if they were available. But if council has something different in mind and they would like to assist me in that, the only thing we need to do is we need move quickly.

It was moved by Commissioner O’Leary, seconded by Commissioner Bury and carried by a unanimous verbal vote to move forward with the request in Communication No. 06-737 to pursue with the hiring of a lobbyist for Butte-Silver Bow and to spend up to \$15,000 for such and place Communication No. 06-737 on file.

Commissioner Bury made a “friendly amendment” to the motion that the Chief Executive and the Chairman of the Council work to make this appointment. It was seconded by Commissioner Fay and carried with a unanimous verbal vote.

SECTION IV

ORDINANCES AND RESOLUTIONS – REFERRED TO JUDICIARY

1. COUNCIL BILL NO. 06-12 ORDINANCE NO. 06-12

AN ORDINANCE AMENDING BUTTE-SILVER BOW ORDINANCE NO. 239 AND CHAPTER 2.64 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “HISTORIC PRESERVATION COMMISSION”; REPEALING CHAPTER 17.33 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “H HISTORIC OVERLAY ZONE”; PROVIDING FOR THE PRESERVATION, PROTECTION, AND PROMOTION OF HISTORIC PROPERTIES, APPOINTMENT AND QUALIFICATION OF MEMBER, DUTIES AND RESPONSIBILITIES OF THE HISTORIC PRESERVATION COMMISSION; APPOINTMENT AND DUTIES OF THE LOCAL HISTORIC PRESERVATION OFFICER; CREATION OF A LOCAL REGISTER AND ITS DESIGNATION AND PROCEDURES; CREATION AND ADMINISTRATION OF DESIGN REVIEW PROTECTION FOR LOCAL REGISTER PROPERTIES; CREATION AND REVIEW OF LOCAL PRESERVATION INCENTIVES; DEVELOPMENT AND PUBLICATION OF HISTORIC PRESERVATION GUIDELINES; REVIEW AND AUTHORIZATION OF DEMOLITION PERMITS ON HISTORIC PROPERTIES; CREATION OF DEMOLITION BY NEGLECT PROCEDURES ON HISTORIC PROPERTIES; ENFORCEMENT OF THIS ORDINANCE; REPEALING BUTTE-SILVER BOW ORDINANCE NO. 238 IN ITS ENTIRETY AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

2. COUNCIL RESOLUTION NO. 06-116

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW HEALTH DEPARTMENT FROM THE MONTANA STATE SUPREME COURT TO BE EXPENDED IN THE BUTTE-SILVER BOW HEALTH DEPARTMENT FUND FOR THE PURPOSE OF ESTABLISHING A DRUG COURT CHIEF COORDINATOR FOR THE SECOND JUDICIARY DISTRICT DRUG COURT.

3. COUNCIL RESOLUTION NO. 06-117

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW HEALTH DEPARTMENT FROM THE MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FUND TO BE EXPENDED IN THE BUTTE-SILVER BOW HEALTH DEPARTMENT FUND FOR THE PURPOSE OF INFRASTRUCTURE PROJECTS, AND ENVIRONMENTAL PUBLIC HEALTH TRACKING AND EDUCATION AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

4. COUNCIL RESOLUTION NO. 06-118

A RESOLUTION VACATING, CLOSING, DISCONTINUING AND ABANDONING A PORTION OF BERLIN STREET ADJACENT TO BLOCKS 4 AND 5 OF THE GOLDSTREAM ADDITION WITHIN THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PRESCRIBING THE EFFECTIVE DATE OF THIS RESOLUTION AND FINDING THE NECESSARY FACTS HEREIN.

5. COUNCIL RESOLUTION NO. 06-119

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE JOHNSON CREEK MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND FINDING THE NECESSARY FACTS HEREIN.

3. COUNCIL RESOLUTION NO. 06-120

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE CARRUTHERS MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

SECTION V

ORDINANCES AND RESOLUTIONS – FINAL READING

1. COUNCIL BILL NO. 06-11 ORDINANCE NO. 06-11

AN ORDINANCE AMENDING SUBSECTION 9.01 OF SECTION 4 OF BUTTE SILVER BOW ORDINANCE NO. 204 AND SECTION 10.32.010(i) OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “STOP SIGNS”; PROVIDING THAT TRAFFIC PROCEEDING ALONG ILLINOIS AVENUE SHALL STOP BEFORE ENTERING THE INTERSECTION OF ILLINOIS AVENUE AND CLARK STREET AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O’Leary, seconded by Commissioner Bury and carried with a roll call vote of 12 yeas and 0 nays to place Council Bill No. 06-11, Ordinance No. 06-11 on final reading and passed having been deemed fully read at length.**

2. COUNCIL RESOLUTION NO. 06-110

A RESOLUTION AUTHORIZING AND APPROVING THE ALLOCATION AND SETTLEMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF BUTTE-SILVER BOW AND ATLANTIC RICHFIELD COMPANY CONCERNING THE BUTTE PRIORITY SOILS CLEANUP SOLUTION AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

It was moved by Commissioner O’Leary, seconded by Commissioner Bury to place Council Resolution No. 06-110 on final reading and passed having been deemed fully read at length. On the question the following commissioners spoke in support of this resolution:

Commissioner Lee – He said this vote is not being taken lightly. The permanent impact upon the lives of future generations of Butte citizens and upon the economic viability of our community cannot be over-stated. The multifaceted issues that are at the crux of the cleanup of the Butte Priority Soils Operable Unit have been examined, analyzed, dissected, debated and open to public scrutiny. It isn’t perfect, but it does provide for a workable cleanup that will be protective of human health and will provide for a better and more accountable stewardship of our environment. The “backstop clause” in the agreement has provided me with the confidence that money will be available so that a good cleanup can be completed. There is an absolute “no unfunded liability clause. The responsibility of the cleanup will fall upon ARCO. Water is the most precious natural resource on this planet. It is the lifeblood of our very existence, yet EPA has written off this important resource by not requiring the removal of the Parrot Tailings in its Record of Decision. Should the EPA decide that it is not possible to restore the

aquifer adequately to support beneficial uses in a reasonable amount of time, it is incumbent on EPA to select a remedy and issue a Record of Decision that clearly identifies the loss of use to the Butte Community. Further, the State of Montana must ensure that any and all compensation from natural resource damages for this area be set aside for use solely in Butte. I want to go on record and be emphatic to say that it would be sorely disappointing that this criteria is not met and the natural resource damages money is not used in Butte. The citizens of Butte have lost an enormous natural resource and must be justly compensated for that loss. I strongly urge that we actively and aggressively do everything within our ability to pursue the necessary monies to remove the Parrott Tailings. He thanked all of the people who took part in the superfund process. I believe that the approval of the Allocation and Settlement Agreement is the best course of action to be taken in providing a responsible cleanup and moving our community forward.

John Sorich – It is imperative that we move this agreement on. I'm excited to be part of history – this is history in the making.

Rocko Mulcahy - Allocation and settlement is what we are working to resolve and it has been a very difficult job to keep everything in focus. What we need now more than ever is forward thinking and decision making. A solid policy solution. It is important to note that there hasn't been one person present an alternative policy solution. Tonight we will close a chapter, and maybe we can say that we have finished a book in a volume of books that need to be completed because this process is really just beginning. This process has not moved forward haphazardly and we have certainly given the public every opportunity. He commended all of the staff who have dedicated their time for this process. The time to take action is now, the process of allocation and agreement has worked itself to the end

Dave Coleman - Said he had received telephone calls, e-mails and visits about concerns over this. We work very hard at what we do. We are doing due diligence by talking to the staff and by researching to come up with the decision.

Mike Sheehy – I've really wrestled with this. I came up with this is the only choice. That makes me nervous. I can't find two reasons to vote for it but I hope that this will be the right decision.

Jim Fay – A lot of people have been affected by what's going on up on the hill. People have suffered a lot. The passage of this bill will be the first step in continuing to make things right.

Ted Bury – Bob McCarthy sized it up best. It's just beginning. This is only the first step. A lot of folks after us could have to make some very, very tough decisions about how to set up our committees, our organizations on how this money is going to be spent. I whole heartedly support this agreement. He called for the question.

A roll call vote was taken with 10 yeas and 2 nays. Motion passes.
Commissioners Sheehy and Coleman voting nay.

ADJOURN

There being no further business to come before the Council, it was moved by Commissioner O’Leary, seconded by Commissioner Bury and carried by a unanimous verbal vote to Rise to the Call of the Chair.

The Meeting adjourned at 8:50 PM.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER